The following changes were made to Chapters 305, Permit by Rule. Changes were effective December 5, 2006.

" *** " indicates a gap in a chapter's text, where no changes are proposed.

Chapter 305, Permit by Rule

Sections 2, 3, 4, 7, 8, 9, 10, 12, 13, 15.

Amend the Note immediately following Sections 2(C)(4)(e), 3(C)(1)(e), 4(C)(2)(e), 7(C)(1)(e), 8(C)(3)(e), 9(C)(1)(e), 10(C)(1)(e), 12(C)(1)(e), 13(C)(1)(e), 15(C)(1)(e) as follows:

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control BMPs, dated March 2003. ~~Handbook for Construction: Best Management Practices, dated March 1991.~~ This handbook and other references ~~on silt fence or hay bale installation and site stabilization~~ are available from the DEP.

Sections 3, 4, 9, 10, 11, 13 and 15.

Amend Section 3(C)(15) as follows:

(15) The use of untreated lumber is preferred. Lumber pressure treated with chromated copper arsenate (CCA) may be used only if necessary and only if use is allowed under federal law and not prohibited from sale under 38 M.R.S.A. 1682, and provided it is cured on dry land in such a manner to expose all surfaces to the air for a period of at least 21 days prior to construction. ~~Lumber~~ Wood treated with creosote or pentachlorophenol ~~or creosote~~ may not be used where the wood will come in contact with water.

Amend Section 4(C)(14) as follows:

(14) The use of untreated lumber is preferred. Lumber pressure treated with chromated copper arsenate (CCA) may be used only if necessary and only if use is allowed under federal law and not prohibited from sale under 38 M.R.S.A. 1682, and provided it is cured on dry land in such a manner as to expose all surfaces to the air for a period of at least 21 days prior to construction. Lumber treated with pentachlorophenol may not be used where the wood will come in contact with water.

Amend Section 9(C)(13) as follows:

(13) The use of untreated lumber is preferred. Lumber pressure treated with chromated copper arsenate (CCA) may be used only if necessary and only if use is allowed under federal law and not prohibited from sale under 38 M.R.S.A. 1682, and provided it is cured on dry land in such a manner to expose all surfaces to the air for a period of at least 21 days prior to construction. Wood treated with creosote or pentachlorophenol may not be used where the wood will come in contact with water.

Amend Section 10(C)(17) as follows

(17) The use of untreated lumber is preferred. Lumber pressure treated with chromated copper arsenate (CCA) may be used only if necessary and only if use is allowed under federal law and not prohibited from sale under 38 M.R.S.A. 1682, and provided it is cured on dry land in a way that exposes all surfaces to the air for a period of at least 21 days prior to construction. Wood treated with creosote or pentachlorophenol may not be used where the wood will come in contact with water.

Amend Section 11(B)(16) as follows:

(16) The use of untreated lumber is preferred. Lumber pressure treated with chromated copper arsenate (CCA) may be used only if necessary and only if use is allowed under federal law and not prohibited from sale under 38 M.R.S.A. 1682, and provided it is cured on dry land in a manner that exposes all surfaces to the air for a period of at least 21 days prior to construction. Wood treated with creosote or pentachlorophenol may not be used where the wood will come in contact with water.

Amend Section 13(C)(6) as follows:

(6) The use of untreated lumber is preferred. Lumber pressure-treated with chromated copper arsenate (CCA) may be used if use is allowed under federal law and not prohibited from sale under 38 M.R.S.A. 1682, and provided it is cured on dry land in such a manner as to expose all surfaces to the air for a period of at least 21 days prior to construction. Wood treated with creosote or pentachlorophenol may not be used where the wood will come in contact with water.

Amend Section 15(C)(12) as follows:

(12) The use of untreated lumber is preferred. Lumber pressure-treated with chromated copper arsenate (CCA) may be used if use is allowed under federal law and not prohibited from sale under 38 M.R.S.A. 1682, and provided it is cured on dry land in such a manner as to expose all surfaces to the air for a period of at least 21 days prior to construction. Wood treated with creosote or pentachlorophenol may not be used where the wood will come in contact with water.

Section 7. Outfall pipes

Amend Section 7C(2) as follows:

(2) Stormwater outfalls, whether a pipe or trench, must utilize velocity reducing structures and/or rock aprons to prevent erosion. A vegetative filter strip of at least 25 feet long must be established and maintained between the outfall structure and the resource unless a different standard is required pursuant to the Site Location of Development Law, 38 M.R.S.A. Sections 481 to 490, or the Storm Water Management Law, 38 M.R.S.A. Section 420-D. The DEP may approve a reduction in width of the vegetated buffer if:

(a) The applicant demonstrates in writing that the full buffer width is not practicable;
(b) Any recommendations from the DEP are incorporated into the activity; and
(c) Approval of the reduction is from the DEP in writing.

Section 9. Crossings (utility lines, pipes and cables)

Amend Section 9(B)(3) as follows:

(3) For any work involving trenching or disturbance of substrate in a coastal wetland, great pond, river, stream or brook that occurs between October 2 and July 14, notice of approval of the timing of the activity from the Department of Inland Fisheries and Wildlife, the Atlantic Salmon Authority and the Department of Marine Resources must be submitted to the DEP with the notification form, unless otherwise approved by the DEP based upon the location of the project. In addition, for a utility crossing of marine or estuarine waters at any time of year, notice of approval of the timing from the Department of Marine Resources must be submitted to the DEP with the notification form.

Amend Section 9(C)(1)(c) as follows:

~~(c)~~ (e) Within 30 days of final stabilization of the site, any silt fence must be removed.

Section 10. Stream crossings (bridges, culverts and fords)

Amend Section 10(B) as follows:

B. Submissions

(1) For any crossing involving trenching or disturbance of substrate in a river, stream or brook that occurs between October 2 and July 14, the proposed dates for construction of the crossing must be clearly identified on the notification form under "Description of Project".

(2) Except for crossings associated with forest management activities, the applicant is required to submit photographs of the area that will be affected by the activity proposed.

(~~2~~3) Photographs showing the completed project and the affected area must be submitted within 20 days of the activity's completion. The photographs must be sent with a copy of the notification form or labeled with the applicant's name and the town in which the activity took place.

Section 11. State transportation facilities

Amend Sections 11(A)(1), 11(B)(2), (3), (7), (8), (10), (11), (13), (14), (18), (19), (20), (21), (22), (23), (24), and (25) as follows:

11. State transportation facilities

A. Applicability

(1) This section applies to the maintenance, repair, reconstruction, rehabilitation, replacement or minor construction of a State Transportation Facility carried out by, or under the authority of, the Maine Department of Transportation (MaineDOT) or the Maine Turnpike Authority, including any testing or preconstruction engineering, and associated technical support services.

(2) This section does not apply to an activity within a coastal sand dune system.

NOTE: The construction of a transportation facility other than roads and associated facilities may be subject to the Storm Water Management Law, 38 M.R.S.A. Section 420-D.

B. Standards

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(2) The activity must be reviewed by the Department of Inland Fisheries and Wildlife, the Department of Marine Resources, and the Atlantic Salmon Authority, as applicable. The applicant must coordinate with the reviewing agencies and incorporate any recommendations from those agencies into the performance of the activity. ~~The activity must be performed according to any recommendations from these authorities.~~

(3) All construction activities undertaken must be detailed in a site-specific Soil Erosion and Water Pollution Control Plan and conducted in accordance with MaineDOT's Best Management Practices for Erosion and Sediment Control, dated January 2000, and ~~The activity must be performed in accordance with erosion control measures conforming with the State of Maine Department of Transportation~~ Standard Specifications ~~for Highways and Bridges~~, dated December 2002. ~~Revision of April 1995 and with the Department of Transportation's Best Management Practices for Erosion and Sediment Control, September 1997.~~

~~NOTE: Guidance on the use of erosion control best management practices can be obtained from the on site Construction Manager.~~

***

(7) The activity must minimize wetland intrusion. The activity is exempt from the provisions of Chapter 310, the Wetlands and Waterbodies Protection Rules, if the activity alters less than 15,000 square feet of natural resources per mile of roadway (centerline measurement) provided that the following impacts are not exceeded within the 15,000 square foot area:

(a) 1,000 square feet of coastal wetland consisting of salt tolerant vegetation or shellfish habitat; or

(b) 5,000 square feet of coastal wetland not containing salt tolerant vegetation or shellfish habitat; or

(c) 1,000 square feet of a great pond.

All other activities must be performed in compliance with all sections of Chapter 310, the Wetland Protection Rules, except 310.2(C), 5(A), 9(~~1~~A), 9(B) and 9(C).

(8) The activity may not permanently block any fish passage in any watercourse containing fish. The applicant must coordinate with the reviewing agencies listed in paragraph 2 above to improve fish passage and incorporate any recommendations from those agencies into the

performance of the activity. ~~The applicant must improve passage beyond what restriction may already exist unless the Department of Inland Fisheries and Wildlife, the Department of Marine Resources, and the Atlantic Salmon Authority concur that the improvement is not necessary.~~

NOTE: For guidance on meeting the design objectives for fish passage, including peak flow, maximum velocity, minimum depth and gradient, see the MaineDOT Fish Passage Policy and Design Guide (December 2004), developed in conjunction with state and federal resource and regulatory agencies.

***

(10) If work is performed in a river, stream or brook that is less than three feet deep at the time and location of the activity, ~~with the exception of culvert installation, the applicant must divert flow away from the activity while work is in progress.~~ the applicant must isolate the work area from the resource and divert stream flows around the work area, maintaining downstream flows while work is in progress.

~~(a) Diversion may be accomplished by the use of stable, inert material. No more than two thirds (2/3) of stream width may be diverted at one time.~~

~~(b) Any material used to divert water flow must be completely removed upon completion of the activity, and the stream bottom must be restored to its original condition.~~

~~(c) A pump may be operated, where necessary, for a temporary diversion. The pump outlet must be located and operated such that erosion or the discharge of sediment to the water is prevented.~~

~~NOTE: Guidance on the appropriate location of a diversion and materials which should be used for a stream diversion can be obtained from the on site Construction Manager.~~

(11) Wheeled or tracked equipment may not operate in the water. Equipment operating on the shore may reach into the water with a bucket or similar extension. Equipment may cross streams on rock, gravel or ledge bottom. If avoiding the operation of wheeled or tracked equipment in the water is not possible, the applicant must explain the need to operate in the water. Approval from the DEP to operate in the water must be in writing, and any recommendations from the DEP must be incorporated into the performance of the activity.

***

(13) Any debris or excavated material must be stockpiled either outside the wetland or on mats or platforms. Erosion and sediment control best management practices ~~Hay bales or silt fence~~ must be used, where necessary, to prevent sedimentation. Any debris generated during the activity must be prevented from washing downstream and must be removed from the wetland or water body. Disposal of debris must be in conformance with the Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S.A. Section 1301 *et seq.*

(14) Work below the normal high water line of a great pond, river, stream or brook must be done at low water except for emergency work or work agreed to by the resource agencies listed in

paragraph 2 above. ~~Measures, such as a silt boom or staked fencing, must be employed to reduce and isolate turbidity.~~

***

~~(18) Soil may not be disturbed during any period when soils are saturated due to rain or snow melt, except as necessary to protect work in progress or as required for bridge maintenance activities. Areas where soils are saturated (i.e. water drips from the soil when squeezed by hand, or the soil is capable of being rolled into a rod 1/8th inch in diameter that does not crumble) must be immediately mulched if they are disturbed.~~

~~(19) Disturbed soil must be protected within one week from the time it was last actively worked, and prior to any storm event, using temporary or permanent measures such as the placement of riprap, sod, mulch, erosion control blankets, or other comparable measures.~~

~~(20) Hay bale or straw mulch, where used, must be applied at a rate of at least one bale per 500 square feet (1 to 2 tons per acre).~~

~~(21) If mulch is likely to be moved because of steep slopes or wind exposure, it must be anchored with netting, peg and twine, binder or other suitable method and must be maintained until a catch of vegetation is established over the entire disturbed area.~~

~~(22) In addition to the placement of riprap, sod, erosion control blankets or mulch, additional steps must be taken where necessary to prevent sedimentation of the water. Evidence of sedimentation includes visible sheet, rill or gully erosion, discoloration of water by suspended particles and/or slumping of banks. Silt fences, staked hay bales and other sedimentation control measures, where planned for, must be in place prior to the commencement of an activity, but must also be installed whenever necessary to prevent erosion and sedimentation.~~

~~NOTE: Guidance on the location and proper installation of erosion control measures can be obtained from the on site Construction Manager.~~

~~(23) Temporary erosion control measures must be maintained and inspected weekly until the site is permanently stabilized with vegetation or other permanent control measures. Erosion control measures must also be inspected immediately prior to and following storms.~~

~~(24) Permanent erosion control measures protecting all disturbed areas must be implemented within 30 days from the time the areas were last actively worked, or for fall and winter activities by the following June 15, except where precluded by the type of activity (e.g. riprap, road surfaces, etc.). The permanent erosion control measures must be maintained.~~

~~(25) The applicant shall immediately take appropriate measures to prevent erosion or sedimentation from occurring or to correct any existing problems, regardless of the time of year.~~

Amend Sections 11(C)(1) and (4) as follows:

C. Definitions. The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise:

(1) Diversion. The ~~A~~ rerouting of a river, stream or brook around a construction site and then back to the downstream channel ~~to a location outside of its established channel~~.

***

(4) Riprap. Heavy, irregularly shaped r~~R~~ocks that are fit into place, ~~usually~~ without mortar, on a slope as defined in the ~~State of~~ Maine~~,~~ DOT~~epartment of Transportation,~~ Standard Specifications ~~for Highway and Bridges~~, dated December 2002~~revision of April 1995~~.

Section 15. Public boat ramps

Amend Section 15(B)(3) as follows:

(3) If the project results in a new or expanded access drive or parking area, ~~T~~the project design plan, erosion control plan and a request for review for an activity on great ponds classified as GPA under 38 M.R.S.A. Section 465-A must be submitted to the DEP's Division of Watershed Management (DWM) prior to submitting the notification form to the DEP. A certification from DWM must be obtained and must be included with the notification form, along with final project plans and the erosion control plan, when it is submitted to the DEP.

Amend Section 15(B)(4) as follows:

(4) The applicant shall submit a copy of the project design plan along with a copy of the notification form to the Department of Conservation, Bureau of Parks and Lands, Submerged Lands Program (State House Station #22 Augusta, Maine 04333) at the time the notification form is submitted to the DEP. Work on the activity may not begin until a lease or easement is obtained or the Bureau of Parks and Lands has provided notification that one is not necessary.

Section 16. Activities in coastal sand dunes

Amend Section 16(A)(1)(a), (c) and Note as follows:

16. Activities in coastal sand dunes

A. Applicability

(1) This section applies to the following activities in coastal sand dune systems:

(a) Repair or r~~R~~eplacement of an existing seawall, patio, deck, driveway or parking area;

(b) Dune restoration or construction;

(c) ~~Beach nourishment;~~ Installation or repair of underground utility lines;

(d) Construction of a new structure or new development, other than a building or closed fence, in a back dune area;

(e) New buildings or an addition to an existing building in a back dune that is not an erosion hazard area; and

(f) Construction of closed fences in a back dune C zone.

PBR applications are reviewed on a case by case basis to determine the concern for damage due to shoreline change. In an area where concern for damage due to shoreline change is identified, the applicant is required to file for an individual Natural Resources Protection Act Permit, and is encouraged to contact the DEP for a pre-application meeting.

Amend Sections 16(B)(3)(a) and (c) as follows:

B. Submissions

***

(3) The following information must also be submitted with the notification form.~~:~~

(a) A site plan that includes the following information. ~~A site plan showing the project location and square footage of the property, buildings and development, both existing and proposed (see definitions of Building, Footprint and Development in Section D);~~

(i) The dimensions and square footage of the lot.
(ii) The dimensions (including height) and square footage of existing and proposed structures and development e.g. houses, sheds, garages, decks, patios, driveways, parking areas, walkways, lawn, etc. and their location on the lot (see definitions of Building, Footprint and Development in Section 16(D)). The existing and the proposed structures must be clearly distinguished.
(iii) The location of property lines and names of abutters.
(iv) The location of buildings on adjacent properties.

For patios, decks, driveways and parking areas that are to be repaired or replaced, the site plan must include the length and width of the existing structure, the height of the existing structure if it is elevated and the thickness of the existing structure;

***

(c) For seawall repair or replacement only, an accurate plan drawn to scale by a licensed surveyor, coastal geologist or professional engineer showing the location of the existing and proposed wall and the elevation of the wall(s) referenced to a nearby permanent and reproducible elevation point, such as a described point on a building or other structure. The plan must be signed and dated by the person responsible for preparing the drawing, and

Amend Section 16(C)(11) and adopt Section 16(C)(15) as follows:

(11) Dune restoration/construction ~~and beach nourishment~~ projects must use sand that has textural and color characteristics consistent with the natural sand's textural and color characteristics.

***

(15) The repair or replacement of a patio, deck, driveway or parking area may not increase the height, length, width or thickness dimensions of the existing structure. The new or repaired

patio, deck, driveway or parking area may be constructed out of a different material provided the dimensions remain the same.

Delete Section 16(D)(3) and amend Sections 16(D)(10), (16), and (18) as follows:

D. Definitions

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(3) Beach nourishment. ~~Artificially adding sand to the beach face.~~ Deleted.

***

(10) Erosion hazard area.

(a) Any portion of the coastal sand dune system that can reasonably be expected to become part of a coastal wetland in the next 100 years due to cumulative and collective changes in the shoreline from:

(i ~~a~~)Historical long-term erosion;

(ii ~~b~~) Short-term erosion resulting from a 100-year storm; or

(iii ~~c~~) Flooding in a 100-year storm after a two-foot rise in sea level; ~~.~~ or

(b) Any portion of the coastal sand dune system that is mapped as an AO flood zone by the effective FEMA Flood Insurance Rate Map, which is presumed to be located in an Erosion Hazard Area unless the applicant demonstrates based on site-specific information, as determined by the DEP, that a coastal wetland will not result from either (i), (ii), or (iii) occurring on an applicant's lot given the expectation that an AO-Zone, particularly if located immediately behind a frontal dune, is likely to become a V-Zone after 2 feet of sea level rise in 100 years.

***

(16) Permanent structure (also referred to as a "structure" in this section). Any structure constructed or erected with a fixed location or attached to a structure with a fixed location for a period exceeding 7 months each year. Permanent structures include, but are not limited to: causeways, piers, docks, concrete slabs, piles, marinas, retaining walls, buildings, swimming pools, fences, seawalls, roads, driveways, parking areas, and walkways. Natural features, such as frontal dunes, are not considered permanent structures. For the purposes of this section, open decks and storage sheds that comply with the criteria outlined below are not considered to be structures.

(a) Open decks that: do not exceed a total of 200 square feet, including any existing decks on the property, are not located in a V-Zone, are supported by posts, and are elevated at least 3 feet above existing grade to allow unobstructed flow of sand, wind and water. One set of outside stairs, attached to the deck, will be considered part of the open deck but not included when determining the 200 square foot area.

(b) One storage shed per lot that does not exceed 100 square feet, provided that it is not located in a V-Zone and that it is not converted to a habitable structure.

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(18) V-zone. That land area of special flood hazard subject to a one- percent or greater chance of flooding in any given year, and subject to additional hazard from high velocity water due to wave action. Wave heights or wave run-up depths are equal to or greater than 3 feet in V-Zones. V-Zones are as identified on the effective Flood Insurance Rate Maps and any subsequent Letters of Map Changes issued by FEMA.

Section 19. Activities in, on or over significant vernal pool habitat

Adopt Section 19 as follows:

19. Activities in, on or over significant vernal pool habitat

A. Applicability

(1) This section applies to activities in, on, or over a significant vernal pool habitat or a potential significant vernal pool habitat. Significant vernal pool habitat consists of a vernal pool depression and the portion of the critical terrestrial habitat within a 250 foot radius of the spring or fall high water mark of the depression.

NOTE: The 250 feet of critical terrestrial habitat protected as significant vernal pool habitat is only a portion of the habitat used by adult wood frogs, ambystomatid salamanders, and threatened and endangered species. Tracking studies of adult pool-breeding amphibians have shown that they can travel over a third-mile away from their breeding pool, and that a radius of 750 feet around the pool is optimal for protecting viable amphibian populations. The DEP encourages efforts to protect more habitat adjacent to a vernal pool than this regulation has authority over.

(2) This section does not apply to an activity that is not or will not be in compliance with the terms and conditions of a permit issued under the Site Location of Development Law, 38 M.R.S.A. Sections 481 to 490, the Stormwater Management Law, 38 M.R.S.A. Section 420-D, or the Natural Resources Protection Act, 38 M.R.S.A. Section 480-A to BB.

NOTE: For additional regulatory provisions applicable to significant vernal pools, see 06-096 CMR 335, Significant Wildlife Habitat.

B. Submissions. The following items must be submitted with the notification, unless otherwise provided below.

(1) Photographs of the area that will be affected by the activity proposed.

(2) Photographs showing the completed project and the affected area must be submitted within 20 days of the activity's completion. The photographs must be sent with a copy of the

notification form or labeled with the applicant's name and the town in which the activity took place.

(3) A scaled plan or drawing of the area affected, including but not limited to the following information:

(a) The entire property on which the activity will take place, including property lines, the vernal pool depression and remaining surrounding significant vernal pool habitat within 250 feet of the spring or fall high water mark of the depression, and the boundaries and location of other protected natural resources such as streams and other wetlands;

(b) Proposed activity and existing development on which the activity will take place, including buildings, parking areas, roads, fill areas, landscaped areas, etc.; and

(c) Any site constraints limiting development beyond the significant vernal pool habitat, such as steep slopes.

It is not necessary to have the plan formally prepared. However, it must be legible and drawn to a scale that allows a clear representation of distances and measurements on the plan.

C. Standards. The following measures must be taken during construction and maintenance of the activity.

(1) No disturbance within the vernal pool depression.

(2) Maintain a minimum of 75% of the critical terrestrial habitat as unfragmented forest with at least a partly-closed canopy of overstory trees to provide shade, deep litter and woody debris.

(3) Maintain or restore forest corridors connecting wetlands and significant vernal pools.

(4) Minimize forest floor disturbance.

(5) Maintain native understory vegetation and downed woody debris.

In determining whether the standard in Section 19(C)(2) has been met, the DEP considers only that portion of the critical terrestrial habitat within the significant vernal pool habitat, which is the area within a 250 foot radius of the spring or fall high water mark of the vernal pool depression.

(6) Take the following measures to prevent erosion of soil or fill material from disturbed areas:

(a) Staked hay bales or silt fence must be properly installed at the edge of disturbed areas between the activity and the vernal pool depression before the activity begins;

(b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;

(c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;

(d) All disturbed soils must be permanently stabilized; and

(e) Within 30 days of final stabilization of the site, any silt fence must be removed.

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control BMPs, dated March 2003. This handbook and other references are available from the DEP.

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(7) An activity of a type that would qualify for a permit by rule under one of the other sections of this chapter listed below, notwithstanding any restriction concerning significant wildlife habitat that may be in that section, must also meet the requirements of that section.

Sec. 4. Replacement of structures
Sec. 9. Crossings (utility lines, pipes, cables)
Sec. 10. Stream crossings (bridges, culverts, fords)
Sec. 11. State transportation facilities
Sec. 12. Restoration of natural areas.
Sec. 13. Habitat creation or enhancement and water quality improvement activities
Sec. 15. Public boat ramps
Sec. 16. Coastal sand dune projects

D. Definitions. The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise.

(1) Critical terrestrial habitat. Uplands and wetlands associated with significant vernal pools used by pool breeding amphibians for migration, feeding, and hibernation, in particular, forested wetlands and forested uplands that provide deep organic litter, coarse woody debris and canopy shade.

(2) Existing developed area. The area of property altered including, but not limited to, buildings, driveways, parking areas, wastewater disposal systems, lawns and other non-native vegetation, as of September 1, 2007.

(3) Significant vernal pool habitat. A vernal pool depression and the portion of the critical terrestrial habitat within a 250 foot radius of the spring or fall high water mark of the depression. For complete criteria, see Chapter 335(9), Significant vernal pools.

(4) Vernal pool depression. This area includes the vernal pool depression up to the spring or fall high water mark, and includes any vegetation growing within the depression.

Section 20. Activities in existing developed areas located in, on or over high or moderate value inland waterfowl and wading bird habitat, or shorebird nesting, feeding, and staging areas.

Section 20 is adopted to read:

20. Activities in existing developed areas located in, on or over high or moderate value inland waterfowl and wading bird habitat, or shorebird nesting, feeding, and staging areas.

A. Applicability

(1) This section applies to activities in existing developed areas located in, on, or over high or moderate value inland waterfowl and wading bird habitat, or shorebird nesting, feeding, and staging areas. This section does not to apply to areas other than existing developed areas.

(2) This section does not apply to an activity that is not or will not be in compliance with the terms and conditions of a permit issued under the Site Location of Development Law, 38 M.R.S.A. Sections 481 to 490, the Stormwater Management Law, 38 M.R.S.A. Section 420-D, or the Natural Resources Protection Act, 38 M.R.S.A. Section 480-A to BB.

(3) This section does not apply to an activity that does not conform to the local shoreland zoning ordinance.

NOTE: For additional regulatory provisions applicable to significant wildlife habitats, see 06-096 CMR 335, Significant Wildlife Habitat.

B. Submissions. The following items must be submitted with the notification, unless otherwise provided below.

(1) Photographs of the area that will be affected by the activity proposed.

(2) Photographs showing the completed project and the affected area must be submitted within 20 days of the activity's completion. The photographs must be sent with a copy of the notification form or labeled with the applicant's name and the town in which the activity took place.

(3) A scaled plan or drawing of the area affected, including information such as:

(a) The entire property on which the activity will take place, including property lines, and the boundaries and location of protected natural resources such as streams and other wetlands;

(b) Proposed activity and existing development on which the activity will take place, including buildings, parking areas, roads, fill areas, landscaped areas, etc.; and

(c) Any site constraints limiting development beyond the 250-foot habitat area, such as steep slopes.

It is not necessary to have the plan formally prepared. However, it must be legible and drawn to a scale that allows a clear representation of distances and measurements on the plan.

(4) For any work in, on or over a shorebird nesting, feeding, and staging area that would occur between July 15 and September 15, notice of approval of the timing of the activity from the Department of Inland Fisheries and Wildlife must be submitted to the DEP with the notification form.

C. Standards

(1) For activities in, on or over a shorebird nesting, feeding, and staging area between July 15 and September 15, the activity must occur during the time period approved by the Department of Inland Fisheries and Wildlife.

(2) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the resource:

(a) Staked hay bales or silt fence must be properly installed at the edge of disturbed areas between the activity and the undeveloped area before the activity begins;

(b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;

(c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;

(d) All disturbed soils must be permanently stabilized; and

(e) Within 30 days of final stabilization of the site, any silt fence must be removed.

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control BMPs, dated March 2003. This handbook and other references are available from the DEP.

(3) An activity of a type that would qualify for a permit by rule under one of the sections listed below, notwithstanding any restriction concerning significant wildlife habitat that may be in that section, must also meet the requirements of that section.

Sec. 3. Intake pipes
Sec. 4. Replacement of structures
Sec. 6. Movement of rocks or vegetation
Sec. 7. Outfall pipes
Sec. 8. Shoreline stabilization
Sec. 9. Crossings (utility lines, pipes, cables)
Sec. 10. Stream crossing (bridges, culverts, fords)
Sec. 11. State transportation facilities
Sec. 12. Restoration of natural areas
Sec. 13. Habitat creation or enhancement and water quality improvement activities
Sec. 15. Public boat ramps
Sec. 16. Coastal sand dune projects
Sec. 18. Maintenance dredging renewal permit

D. Definitions. The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise.

(1) Existing development area**.** The area of property altered including, but not limited to, buildings, driveways, parking areas, wastewater disposal systems, lawns and other non-native vegetation, as of June 8, 2006. "Existing developed area" has the same meaning as "existing development area".

(2) Inland high or moderate value waterfowl and wading bird habitat. A high to moderate value inland habitat is an inland wetland complex, and a 250 foot wide zone surrounding the wetland complex, that through a combination of dominant wetland type, wetland diversity, wetland size, wetland type interspersion, and the percent of open water meets IF&W guidelines or is an inland wetland complex that has documented outstanding use by waterfowl or wading birds. See Chapter 335(10)(A) for complete criteria.

(3) Shorebird nesting, feeding, and staging areas. High or moderate value shorebird nesting, feeding, and staging areas, and a 250 foot wide zone surrounding those areas, are significant wildlife habitats. Shorebird species include the members of the families Scolopacidae, Charadriidae, and Haematopodidae, including, but not limited to, sandpipers and plovers. See Chapter 335(11) for complete criteria.

Note: The significant wildlife habitats subject to this section are depicted on GIS data layers maintained by IF&W and available from either IF&W or the DEP.

The following non-substantive, typographical and numbering errors were found in revising the rule, and have been corrected.

Section 7(C)(2), "department" was changed to "DEP", consistent with usage in Section 1.

In Section 11(B), correct numbering as shown below.

(18~~26~~) Non-native species may not be planted in restored areas.

(19~~27~~) Disposal of debris must be in conformance with Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S.A. Sections 1301 *et seq.*

(20~~28~~) Disturbance of vegetation must be avoided, if possible. Where vegetation is disturbed outside of the area covered by any road or structure construction, it must be reestablished immediately upon completion of the activity and must be maintained.

(21~~29~~) A vegetated area at least 25 feet wide must be established and maintained between any new stormwater outfall structure and the high water line of any open water body. A velocity reducing structure must be constructed at the outlet of the stormwater outfall that will create sheet flow of stormwater, and prevent erosion of soil within the vegetated buffer. If the 25 foot vegetated buffer is not practicable, the applicant must explain the reason for a lesser setback in writing. Approval from the DEP must be in writing and any recommendations must be incorporated into the activity.

Section 16(D)(10)(a), correct numbering (1), (2), (3) as shown in proposed amendments, and (a), (b), and (c) in the current rule to (i), (ii), (iii) as shown below.

(a) Any portion of the coastal sand dune system that can reasonably be expected to become part of a coastal wetland in the next 100 years due to cumulative and collective changes in the shoreline from:

(i~~a~~) Historical long-term erosion;

(ii~~b~~) Short-term erosion resulting from a 100-year storm; or

(iii~~c~~) Flooding in a 100-year storm after a two-foot rise in sea level; or

Section 16(D)(10)(b) correct cross-reference from (1), (2), or (3) as shown in the proposed amendments to (i), (ii), or (iii).

(b) Any portion of the coastal sand dune system that is mapped as an AO flood zone by the effective FEMA Flood Insurance Rate Map, which is presumed to be located in an Erosion Hazard Area unless the applicant demonstrates based on site-specific information, as determined by the DEP, that a coastal wetland will not result from either (i), (ii), or (iii) occurring on an applicant's lot given the expectation that an AO-Zone, particularly if located immediately behind a frontal dune, is likely to become a V-Zone after 2 feet of sea level rise in 100 years.

Section 16(D)(10)(b) "department" was changed to "DEP", consistent with usage in Section 1.

Section 19(A)(note). "department" was changed to "DEP", consistent with usage in Section 1.

Section 19(B)(3)(b). A noun was missing in the sentence. "activity" was added after "proposed" at the beginning of the sentence.

(b) Proposed activity and existing development on which the activity will take place, including buildings, parking areas, roads, fill areas, landscaped areas, etc.; and

Section 19(C)(second paragraph). "department" was changed to "DEP", consistent with usage in Section 1.

Section 20(B)(3)(b). A noun was missing in the sentence. "activity" was added after "proposed" at the beginning of the sentence.

(b) Proposed activity and existing development on which the activity will take place, including buildings, parking areas, roads, fill areas, landscaped areas, etc.; and

Section 20(C)(3). "quality" was changed to "qualify" in the first line.

(3) An activity of a type that would quality for a permit by rule under one of the sections listed below, notwithstanding any restriction concerning significant wildlife habitat that may be in that section, must also meet the requirements of that section.

Section 20(D)(3)(note). "department" was changed to "DEP", consistent with usage in Section 1.